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ABSTRACT

When state education agencies (SEAs) set out to fulfill their increasing recognized obligation to provide services to private schools, they must make very practical policy decisions that are in turn related to value judgments about these schools' legitimacy, their right to freedom from government interference, and the extent of control the state should exercise. This report discusses some of the practical policy decisions that SEAs face: how "schools" should be defined, whether SEAs can take action against those who claim to operate schools but fail to offer minimally acceptable levels of education, what level of control over private education an SEA should seek, and how SEAs can help private schools improve. (Author/PGD)

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SERVING PRIVATE SCHOOLS:

Legitimacy, Freedom and Control

An Issue Analysis Paper

Prepared for the Chief State School Officers
of the States of Alaska, Hawaii, Idaho,
Montana, Oregon and Washington

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SERVING PRIVATE SCHOOLS:

Legitimacy, Freedom and Control

Introduction

Providing services to private schools, either directly or through shared financing or by both means, has increasingly become a recognized function of state education agencies. For SEAs, fulfilling this obligation appropriately and in good faith requires the reconciling of a number of conflicting values not so much at the philosophical as at the operational level.

Serving private schools involves making value judgments about the fundamental legitmacy of the school itself: is it really a bona fide school, or is it just a back door means of accomplishing some other purpose, such as perpetuating economic or social segregation or advancing some perhaps devious social goal, inimical to the general welfare? There must be judgments made about the school's claim of its right of freedom from government interference: Can it maintain its freedom to be different (a value much prized in a pluralistic society) without abusing that freedom to the detriment of its students and of the society as a whole? Judgments must also be made about how much control, and what kind of control, the SEA wishes to exercise within the bounds of its general legal authority to oversee education in the state.

These essentially philosophical questions of legitimacy, freedom and control become very practical policy issues at the operational level because of the high visibility that nonpublic schools have been given in the current federal consolidation legislation and the very specific requirements placed upon SEAs for assuring that these schools get their "equivalent" share of money and services. Not only must the SEA serve the private schools without an "impermissible degree of entanglement,"

(see NWREL Issues Analysis Paper, PUBLIC EDUCATION AND PRIVATE SCHOOLS: Service Without Entanglement, September 1981) but this service must be rendered in a manner compatible with the educational policies of the individual state and in conformity with its laws and regulations.

I. Defining the Private School

If services and fiscal resources are to flow from the public education sector to the private, some sort of definition of what constitutes a private school becomes essential. The rather bland term "nonpublic school" which is often used as a synonym for "private school" does not offer much guidance, for it merely says what the institution is not: it is not a part of the public school system; that's all we know. But is it a school?

Unfortunately, neither linguistic (dictionary) nor legal (statutory) definitions are a great deal of help. Almost any institution which claims to be organized for the purposes of instruction, and which asserts that it has teachers and students, could call itself a school and--in a technical sense--be correct in so doing. But the problem of abstract definition is not the one faced by the SEA: what the SEA wants to know is whether this--whatever--is really a school entitled to services and to funds.

A school--or something else? Home-study without trained teachers, without organized curriculum, without recognized instructional materials? A cell of a cult, rightist or leftist or just off the wall? The purely entrepreneurial scheme of a fast-buck operator? The SEA has to know.

Formulating a working definition of a private school may simply not be feasible except in terms of the concept of comparability. This is the concept which underlies most state laws requiring compulsory attendance.

Compulsion and Comparability. Although the basic principle of compulsory school attendance is admittedly controversial, it is not necessary here to examine the pro and con arguments in order to use the concept as a valuable point of reference. In most state laws requiring compulsory school attendance, provision is made for children not in public school to be in compliance with the law if they are receiving "comparable" instruction in another setting.

The principle of comparability becomes very useful to the SEA in determining how to treat private schools. First, it does not require that the private or nonpublic school be identical to the public schools; it seeks comparable programs, not a stulifying sameness. This outlook is reassuring to those parents who really do want some options and freedom of choice; yet the state is not telling the parents that anything goes. The comparability test does not suggest that private schools are "better" or "worse" than public schools; it avoids invidious comparisons.

The comparability principle avoids the necessity of precise definition of a "private school," detouring around the thorny definitional thickets by asking not what the school is, but what it does.

Does the private school, in short, offer a reasonably comparable educational opportunity to its students when compared with the public schools of the state? The criteria for making the judgments--admittedly somewhat subjective value judgments--need not be excessively detailed or demanding. Most persons whose training, experience, and orientation are largely geared to the public school enterprise probably would have a personal preference for holding private schools to the same detailed standards as those which govern the approval or accreditation of public schools; but we can actually get by with a lot less.

As a very bare minimum, the criteria of comparability might be limited initially to just three areas: teachers, programs and facilities. If these are such as to offer a minimally comparable educational opportunity to students, then the private school may be considered to be an actual school, eligible for SEA services and support.

Some very fundamental questions would be asked of the enterprise which purports to be a private school. With respect to the teachers, the question would not be whether they are state-certified, but whether they have some even roughly comparable special training for teaching which goes beyond just having achieved adulthood or parenthood. With respect to school program (or, more formally, curriculum), does the private school offer the same fundamental subjects over a long enough period of time to permit at least basic exposure to the skills and knowledge covered in the public school curriculum? And finally, are the facilities sufficient to give basic protection to the students' health, safety and welfare?

It is very clear that these basic questions do not address many other important issues: the quality and appropriateness of textbooks and other instructional materials; the clock hours of actual instruction in the various subjects; the availability of a library and other special services; the program of student assessment and evaluation; and such relatively subjective matters as the climate of the school and the provisions it makes for the normal social growth and development of the students. So, even if the answers to questions about teachers, programs and facilities are minimally satisfactory, all that would be established is that whatever is being called a "school" actually is one. Nothing would necessarily be known of its quality, its effectiveness, its

potential for improvement--all ~~materials~~ MATTERS of great educational importance. But knowing that the school is, provides a starting place for the SEA, at least legitimizing the school's place in the lineup of those eligible for the mandated "equivalent" support and service to which other private schools are entitled.

Just to make a determination that the private school actually is one--of sorts--is a place for the SEA to start, but not the place where most agencies would like to stop. For the sake of the children involved and the welfare of society as a whole, can't the SEA make some more discriminating quality assessments and exercise at least a modicum of quality control? Some states are able to do so, but many SEAs report that they must face some very serious limiting realities.

II. Realities Which Limit SEA Action

It is well understood that state law regarding education, except where federal constitutional provisions take precedence, ultimately controls the relationship between public and private education. These differences among states are specifically recognized in the federal consolidation legislation, as they have been in previous Congressional acts, by the inclusion of the "bypass" provisions applicable to states which have especially limiting provisions in their own constitutions and statutes regarding aid to religiously oriented private schools.

Even within the six Northwest and Pacific states for whom this analysis is being prepared, marked differences have been reported in the state laws respecting the private school sector, ranging from the almost absolute legal authority of the SEA to oversee private schools to a complete absence of any authority whatsoever. Given the current political climate, it is unlikely that there will be much tampering with these basic state statutes in the immediately foreseeable future; and what changes may be wrought will most likely be toward decreasing, rather than increasing, state authority over private education.

But is is not the laws themselves which most severely circumscribe state efforts to weed out those private or nonpublic schools which clearly do not meet the most minimal criteria for offering a "comparable" educational opportunity as outlined above. It is not the law that limits, but the reported political and public opinion climate.

As a practical matter, in several of the states, if the SEA should attempt to exert any control over nonpublic education it would be cast in the unwelcome role of being seen as against parents and parental autonomy and freedom of choice--the archtypical big brother government operating through a power hungry bureaucracy. Moreover, anyone who even raises questions about the legitimacy or adequacy of parent-sponsored schools just has to be <u>for</u> all those things that many of the these parents are <u>against</u>: pornography, promiscuity and pot, for examples.

There is a further problem: the reluctance of public officials to take any direct action against these schools which are found to be operating in defiance of state law, or against the parents whose support of these illicit schools actually places them in a position of violating the truancy laws--the children are in "school" only in the myopic eyes of

the parents, not in the eyes of the law. Yet the local school board, charged under the laws of many states with the responsibility of determining that the children are receiving instruction comparable to that in the public schools, do not want to become embroiled in controversy. The district attorney, or other prosecuting authority, is "too busy" to handle such cases. This, at least, is the report from many states--and not in just this one section of the United States.

Given these practical limitations, what options does the SEA have as it wrestles with the problems of the legitimacy, the freedom, and the control of private schools?

III. Options for SEA Involvement with the Nonpublic Education Sector

If we are correct in concluding that the SEA is going to become involved--and if the language of the current consolidation legislation persists (or is strengthened), that conclusion seems almost inescapable--what are some of the policy options available? That is, given the constitutional and statutory limitations--or affirmative obligations--placed upon the SEA, and given the uncertain but generally negative political climate which emphasizes a "hands-off" policy, what can the SEA do?

The SEAs report--with great variation from state to state--a number of generally recognizable (and often politically and legally acceptable) levels of possible SEA involvement with nonpublic schools. These can be placed in a somewhat hierarchical or graduated order, from the minimal to the most thorough control.

1. The SEA can totally ignore the existence of private schools unless a specific problem is raised or request is initiated from outside the agency.

2. The SEA can attempt to locate and verify the existence of such schools through reports from LEAs and other sources, but take no further action.

3. The SEA can utilize existing legislation (or seek new legislation) to require all private schools simply to register with the agency--nothing more. (But you can hear the anguished cries: the West wasn't settled with a registered school...!)

4. Given appropriate statutory or regulatory power, the SEA can simply authorize--give permission to--private schools to operate without making or entering any judgment of program quality or even adequacy (assuming that the school does not violate any specific state law).

5. With proper authority to do so, the SEA can approve private schools, such approval going beyond mere authorization to operate, implying a degree (however minimal) of endorsement of the school's program.

6. At the highest level of state involvement, the SEA can accredit private schools, such accreditation denoting a higher standard of approval, one usually obtainable only by schools which voluntarily seek such recognition.

IV. Toward Private School Improvement

It is probably safe to assume that nearly every SEA has as its chief aim in clarifying its relationship with private schools not one of exerting its authority over these schools, or of extending the scope of that authority just for the sake of establishing who's in charge. Rather, as was indicated at the beginning of this paper, the immediate concern of the SEA in clarifying the relationship is one of finding a mutually acceptable (if not wholly satisfying) definition of a private school eligible for services and funding from the public sector.

However, beyond this initial stage of definition leading to appropriate SEA service and funding is the much more important issue of how the SEA can help the marginal private school improve its services to children. There seems to be rather general agreement among SEAs that it is the state that must take the initiative in establishing with the private school a relationship--however tenuous it may at first be--which

will permit the SEA to assist in private school improvement. Although that topic is not subject of this paper, it is an important part of the issue analysis to suggest that the public/private school relationships, though admittedly often difficult, can indeed be productive if the SEA takes the initiative. Many SEAs have done much to improve this relationship through such means as keeping the private schools informed about the most promising developments in curriculum, instructional materials, and instructional strategies; offering direct technical assistance in solving education problems faced by the private schools; opening up inservice programs to private school staff; and encouraging at least limited, short-term or even one-shot exchanges of personnel (both students and teachers) between the public and the private school systems.

V. Potentials: A Cheerful Note

The challenges to the SEAs in dealing productively with the private school sector have undoubtedly been made more vexing because of the specificity of the consolidation legislation in mandating the sharing of services and resources with private schools without any guidance--or even any hint--about how a state is to be assured that the support will not be diverted to unworthy and inappropriate enterprises that are schools in name only. The problem, however, may turn out to be less serious than might be expected.

Simply stated, the most dubious of the private "schools" very probably will not apply for--and many would not even accept--the proffered money anyway. Some of the worst of the schools (the "cult" and the "hate" and the "survival" schools, for example) thrive on semi-secrecy; they want to attract as little attention as possible. Moreover, many of the basically legitimate, but often substandard,

private schools are conscientiously opposed to accepting any form of government subsidy. SEAs will probably never even hear from either of these types of schools.

The many fine, legitimate private schools which play a significant part in actually offering variety, diversity, and freedom-to-choose as part of the pluralistic American educational system will probably be eager applicants for and reasonably grateful recipients of the available funds. In their own established tradition of the constant pursuit of excellence, such schools may well be motivated to seek additional educational services and technical assistance from SEAs. Insofar as what they seek can be offered by the SEAs without raising "entanglement" problems, both public and private education may be better off as the relationships between the two are strengthened.

Furthermore, as the SEA develops whatever local plan/application procedures as finally decided upon, the "approved application" process will give the SEA a very definite mechanism for helping bring about the improvement of legitimate private schools, and even of some which now border on academic or social illegitimacy. The SEA, thus, can work for needed private school improvement on a practical operating level, as a matter of consciously adopted educational policy, whatever the status of its actual power to register, authorize, approve, or accredit nonpublic schools.